



TATE BOARD OF EQUALIZATION
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Executive Director

August 15, 1997

Mr. Gregory J. Smith
San Diego County Assessor
1600 Pacific Highway, Rm 103
San Diego, California 92101-2480

Attn: Ms. Michelle Carter

Dear Mr. Smith and Ms. Carter:

This is in response to your letter of June 25, 1997, to Mr. Bill Minor of the Board of Equalization Property Taxes Division. You request our opinion as to whether, under the circumstances related in your letter, the Assessor can correct a mailing error by granting a prior year homeowners' exemption to the property owner who was not mailed a homeowners' exemption claim form as required by Revenue and Taxation Code § 255.3, notwithstanding the fact that the taxpayer did not file for the exemption for that year as required by Revenue and Taxation Code § 253.5. Unfortunately, for the reasons set forth below, it is our conclusion that the Assessor cannot.

Our analysis must begin with the California Constitution, the source of the homeowners' exemption. There, Article XIII, §6 provides:

The failure in any year to claim, in a manner required by the laws in effect at the time the claim is required to be made, an exemption or classification which reduces a property tax shall be deemed a waiver of the exemption or classification for that year.

Revenue and Taxation Code §260 similarly provides that if any person, claiming any Section 251 through Section 259.11 exemption, fails to follow the required procedure, the exemption is waived by the person. Since Revenue and Taxation Code §253.5 provides that any person claiming the homeowners' property tax exemption shall submit an affidavit to the assessor, failure to do so constitutes a waiver of the exemption under Article XIII, §6 and §260.

As you know, Revenue and Taxation Code §255.3 requires the assessor to each year mail a claim form for the homeowners' exemption to a person acquiring title to, and recording his

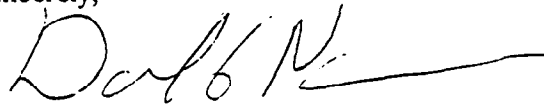
August 15, 1997

ownership of an eligible dwelling after the preceding lien date. However, that section continues to specifically provide that "The failure of a person to receive a claim form shall not, however, excuse the person from timely filing of the required affidavit." Such is consistent with the limitations of Article XIII §6 and Section 260.

The Revenue and Taxation Code provides several mechanisms for limited extensions of time to file or to supplement a homeowners' exemption affidavit, none of which appear to apply to the facts with which you have presented us. See Revenue and Tax Code §§255.1, 255.2, 275. However, as provided in the Constitution and §260 as noted above, once the final time within which to file for the exemption has passed, the exemption is deemed waived for that year, and there is no mechanism available to revive it.

The views expressed in this letter are advisory only; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Sincerely,



Daniel G. Nauman
Tax Counsel

DGN:ba

cc: Mr. Jim Speed - MIC:63
Mr. Dick Johnson - MIC:64
Mr. Bill Minor - MIC:64
Ms. Jennifer Willis - MIC:70

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November 3, 1982

Mr. Gerald F. Allen
Sutter County Assessor
463 Second Street
Yuba City, CA 95991

Dear Mr. Allen:

This is in response to your August 18, 1982, letter in which you ask if a homeowner's exemption may be granted under Section 255.3 in the following situation:

On 11/5/79 Dean deeds to
Will and Tom Assoc. On 11/5/79
 Will and Tom Assoc.
deed to and Krueger.

Your office received a copy of the first deed but not the second. The property was later reappraised and the lending agency paid the taxes. It wasn't until the Krueger's applied for a loan that you became aware they were the owners.

When I spoke to you about the problem, I thought there was a possibility that the section might provide the Krueger's some relief in view of the fact the homeowner's claim was never sent by your office. As I indicated it has been our position that if the homeowner's claim was never sent as required by Section 255.3, the taxpayer could file for the claim upon receiving the notice of the denial through the tax bill and be entitled to the total exemption rather than 80%. Our rationale for this conclusion is based on the principle that it would be improper to only grant the partial exemption when the claimant or his agent never received the required claim form.

However, once the tax bill is received (whether it is received by the claimant or his agent), the claimant is put on notice that the homeowner's exemption was either granted or denied. Accordingly, the notice purpose of Section 255.3 has been met and unless the claimant files before the December 1 deadline, the homeowner's exemption is lost for that year.

November 3, 1982

In the case at hand, the Krueger's agent (the lending institution) received the tax bill in 1980. Since they did not file the claim by the December 1 deadline for either 1979 or 1981, no homemaker's exemption for those years can be allowed.

However, for 1982 they are entitled to the partial exemption if they file by the December 1 deadline.

Very truly yours,

Glenn L. Rigby
Assistant Chief Counsel

GLR:jlh

cc: Mr. Gordon P. Adelman
Mr. Robert H. Gustafson
Mr. William Grommet
Legal Section